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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

HPV TECHNOLOGIES, INC.

Plaintiff, Cross-defendant and  
Respondent,

v.

DRAGOSLAV COLICH,

Defendant, Cross-complainant and  
Appellant.

G043212

(Super. Ct. No. 30-2008-00110679)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Gregory Munoz, Judge. Appeal dismissed.

Freisen, Guy & Associates and Henry P. Friesen for Defendant, Cross-complainant and Appellant.

Foley Bezek Behle and Curtis, Roger N. Behle Jr. and Marisa D. Poulos for Plaintiff, Cross-defendant and Respondent.

\* \* \*

We dismiss an appeal from a summary judgment on a former employee's cross-complaint against his employer where the same parties have yet to adjudicate the principal action involving the same employment relationship. Pending resolution of the main action, the summary judgment on the cross-complaint is premature and not appealable.

## I FACTUAL AND PROCEDURAL HISTORY

In August 2008, plaintiff HPV Technologies, Inc. (HPV) sued defendant Dragoslav Colich (Colich) for declaratory and injunctive relief. The operative pleading is the first amended complaint, filed in November 2008. HPV, which designs and manufactures professional audio systems, alleges that Colich, who ended his employment in May 2008, misappropriated confidential information and proprietary trade secrets to lure customers and employees away from HPV.

In February 2009, Colich answered the complaint and filed a cross-complaint against HPV, asserting various wage and hours violations, including overtime pay and unpaid wages and commissions.

In August 2009, HPV moved for summary judgment on Colich's cross-complaint. HPV argued the entire cross-complaint should be barred by a severance agreement in which Colich released his employment claims against HPV in return for \$54,298. HPV also argued that the undisputed facts showed Colich to be an exempt employee not entitled to overtime compensation.

Following a hearing, the trial court granted HPV's summary judgment motion, finding that HPV "has met its initial burden showing it has a complete defense to the action (the release). Colich has not offered any evidence to create a triable issue of fact with regard to the existence or enforceability of the release."

In January 2010, Colich filed a notice of appeal from the summary judgment in HPV's favor on the cross-complaint. Acting in response to Colich's request, the trial court stayed trial on the complaint pending resolution of the appeal.

HPV has moved to dismiss the appeal for lack of jurisdiction because "[a]ll of HPV's causes of action against Colich remain pending before the trial court." We received extensive briefing, including an opposition and reply.

## II

### THE APPEAL VIOLATES THE "ONE FINAL JUDGMENT" RULE

To avoid piecemeal appeals, California requires appealable judgments to leave nothing to be decided between the same parties to a controversy. Under the one final judgment rule, "an appeal cannot be taken from a judgment that fails to complete the disposition of all the causes of action between the parties." (*Morehart v. County of Santa Barbara* (1994) 7 Cal.4th 725, 743.) "A cross-complaint is not considered sufficiently independent to allow a separate final judgment to be entered upon it." (*Fleuret v. Hale Constr. Co.* (1970) 12 Cal.App.3d 227, 230 [defendant cannot appeal from judgment on cross-complaint before determination of issues raised by complaint]; see also *Daon Corp. v. Place Homeowners Assn.* (1989) 207 Cal.App.3d 1449, 1456.) "Where a complaint and cross-complaint involving the same parties have been filed, there is no final, appealable judgment *until both have been resolved*. [Citation.]" (*ECC Construction, Inc. v. Oak Park Calabasas Homeowners Assn.* (2004) 122 Cal.App.4th 994, 1002, italics added.)

Colich contends that this appeal comes within an exception to this rule because it is a "complete disposition" of the causes of action in the cross-complaint and because the complaint and cross-complaint are "wholly separate matters . . . ."

We know of no such exception. As is apparent from the procedural summary, the complaint and the cross-complaint involve closely interrelated issues

concerning the employment relationship between HPV and Colich, including Colich's postemployment duties and liabilities, if any, following his departure.

Colich appears to have misapplied the so-called "collateral order doctrine," which permits appeals from final determinations of collateral matters, such as orders regarding the sealing of documents, or the imposition of sanctions. (See, e.g. *Mercury Interactive Corp. v. Klein* (2007) 158 Cal.App.4th 60, 76-77.) Suffice it to say, the summary judgment on Colich's cross-complaint is not distinct and severable from the general subject of the litigation. To avoid multiple appeals, our review of the merits of Colich's cross-claims must await the final disposition of the entire case.

### III

#### DISPOSITION

The appeal is dismissed. Respondent is entitled to costs on appeal.

SILLS, P. J.

WE CONCUR:

RYLAARSDAM, J.

IKOLA, J.